

DRUG DELIVERY RESULTING IN DEATH (DDRD) CHARGES IN CONTEXT: THE OVERDOSE CRISIS, PUBLIC HEALTH, AND DDRD PROSECUTIONS

Presenters:

- Jeremiah Goulka, Senior Fellow, Health in Justice Action Lab, Northeastern University School of Law
- Lisa Newman-Polk, Esq. LCSW, lawyer and social worker
- Joshua Vaughn, Staff Reporter, The Appeal

Drug Delivery Resulting in Death Charges in Context

The Overdose Crisis, Public Health, and DDRD Prosecutions

Defending Drug Overdose Homicides in Pennsylvania
November 6, 2019

Jeremiah Goulka, LL.B., JD

Health in Justice Action Lab

Northeastern University School of Law



Northeastern University
School of Law

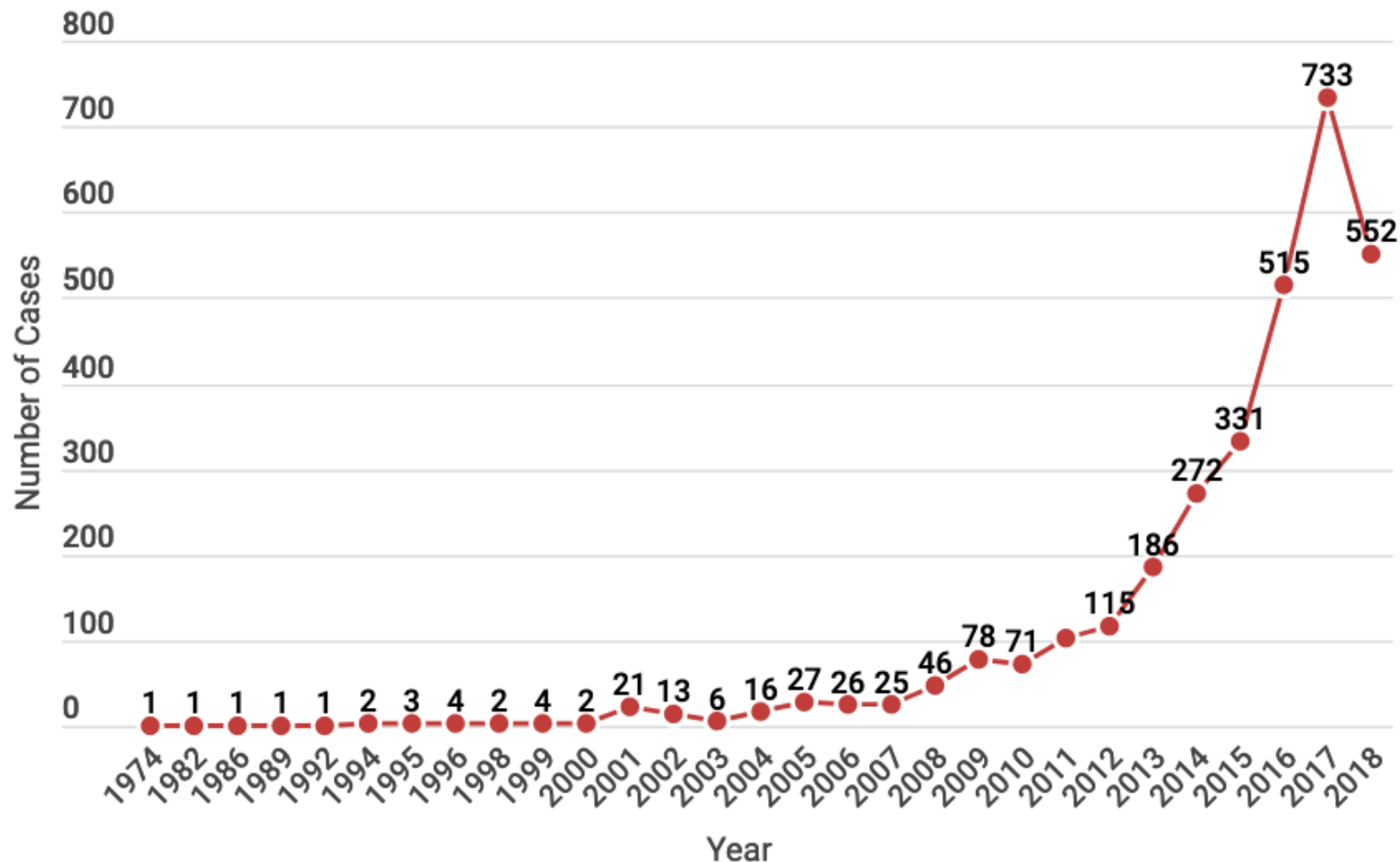


Conflict Declaration

No conflicts to declare

Surge of DDRD Charges Over Time

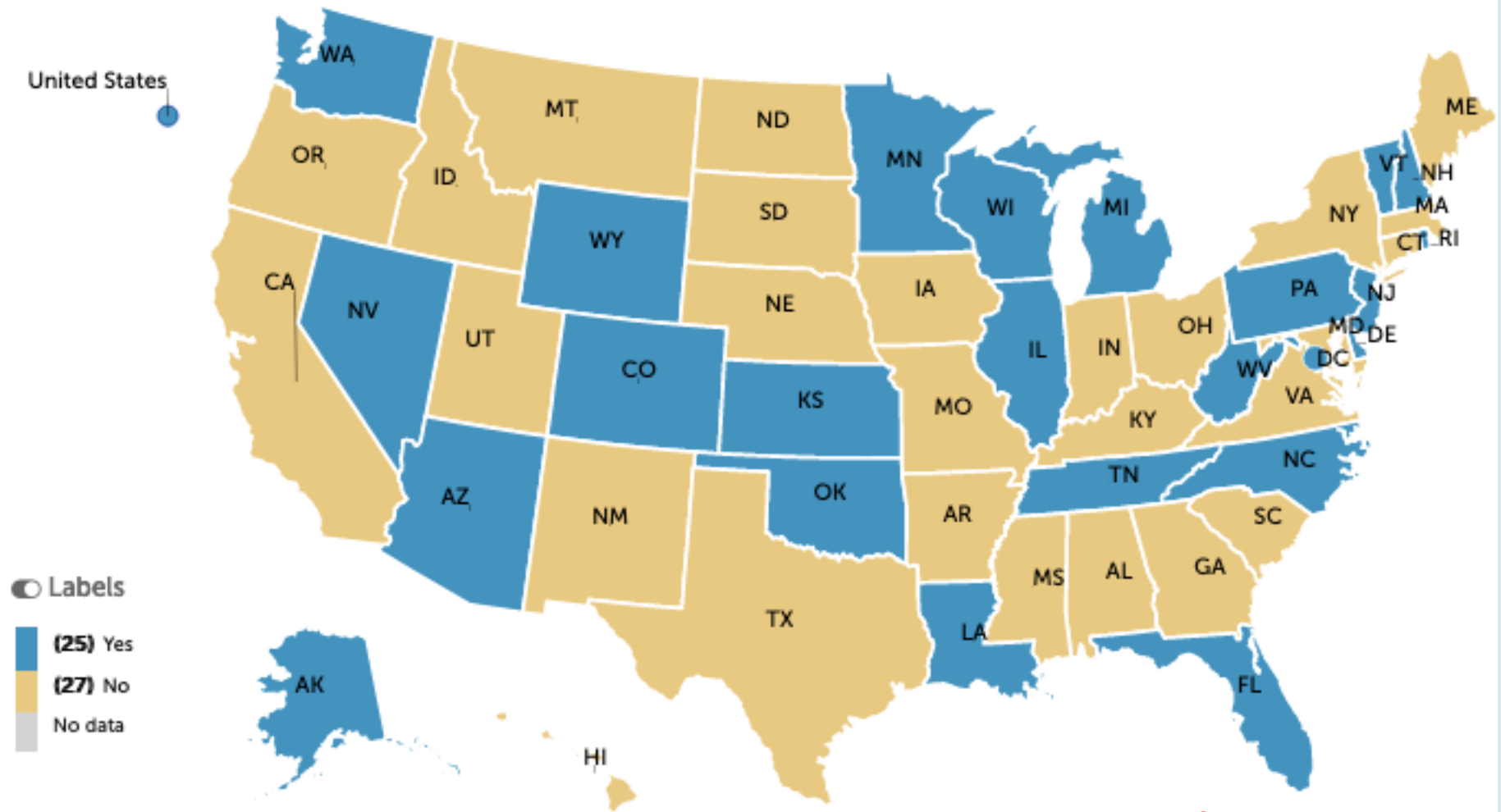
DIH Charges by Year



Source: <http://healthinjustice.org/drug-induced-homicide>

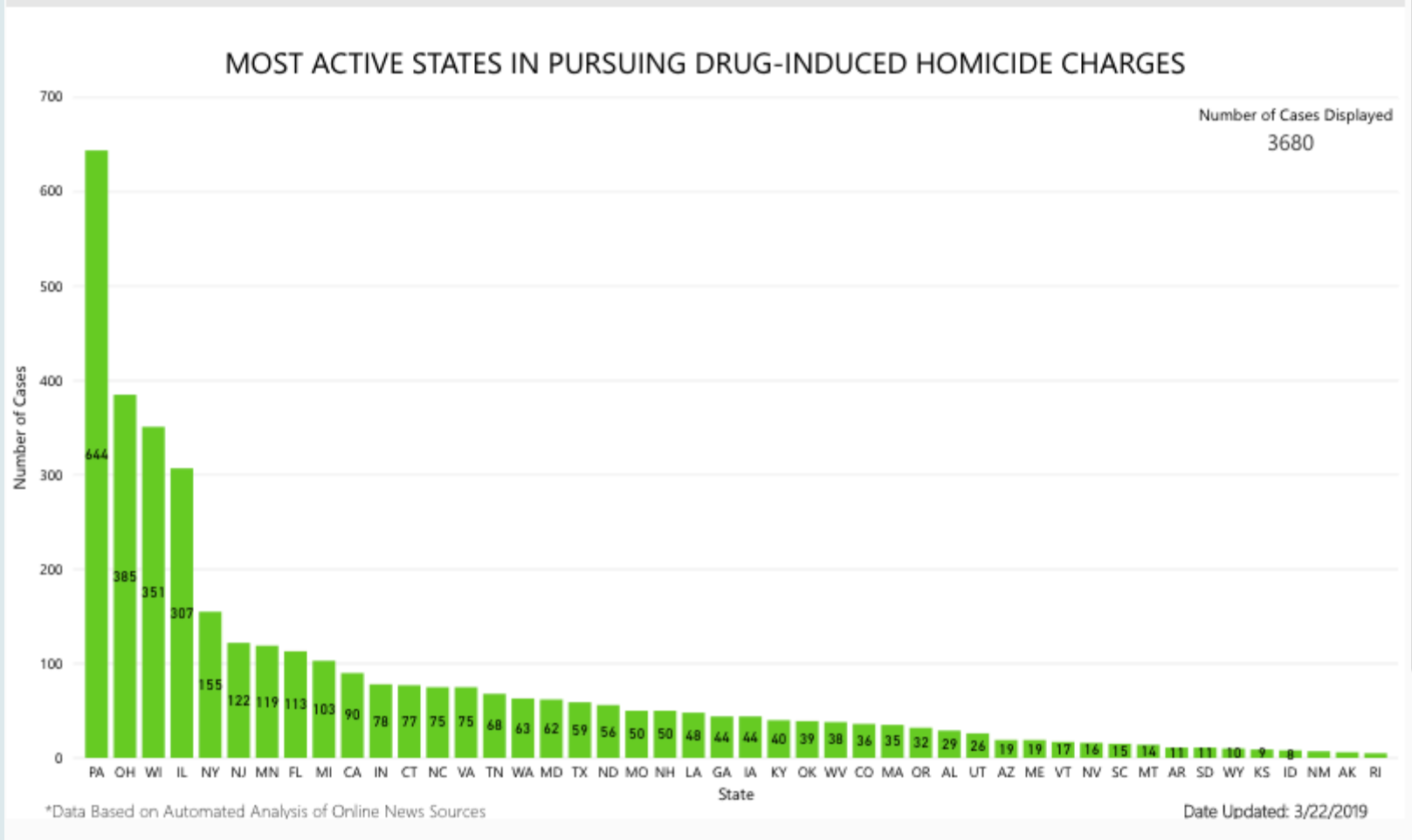
DDRD Statutes

1/1/19 Does the state have a specific drug induced homicide law?



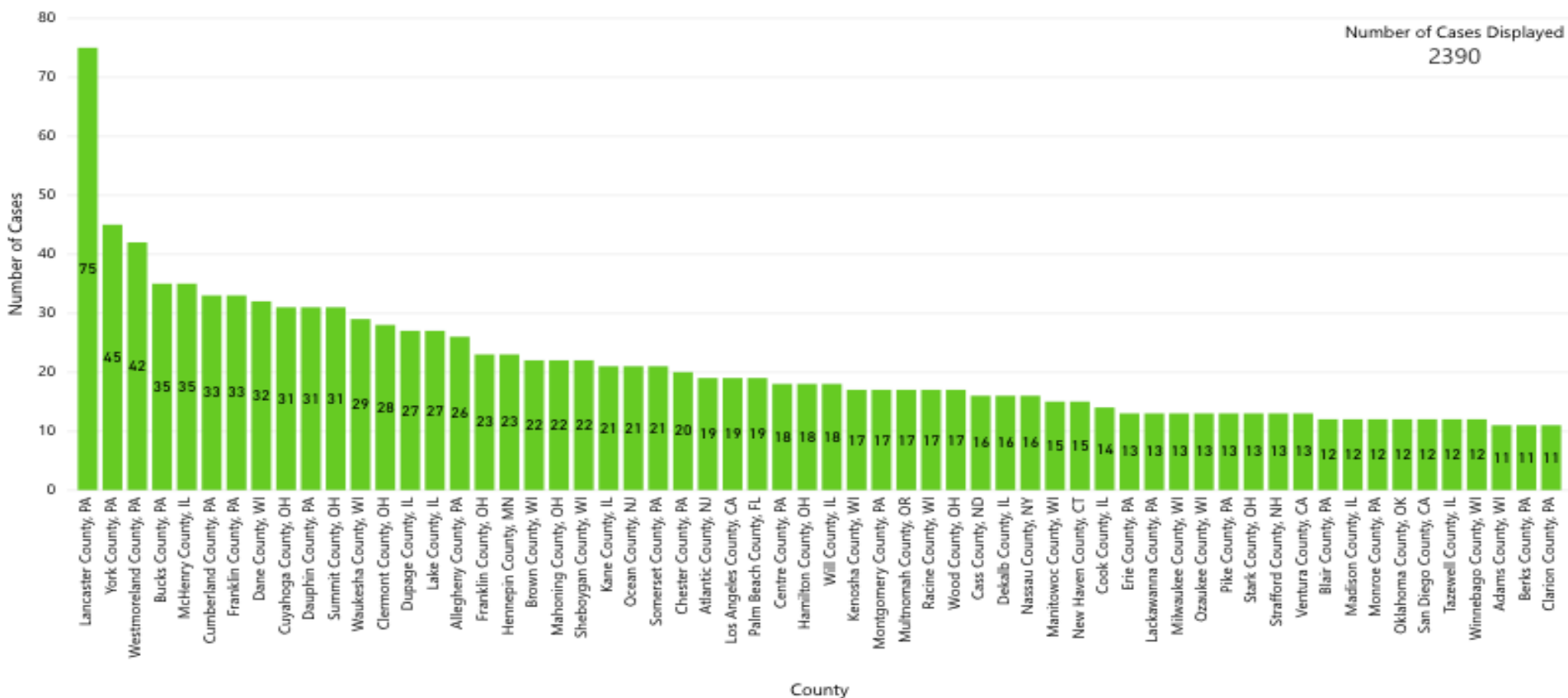
Source: www.pdaps.org

Uneven Geographic Distribution



Uneven Geographic Distribution

MOST ACTIVE COUNTIES IN PURSUING DRUG-INDUCED HOMICIDE CHARGES



*Data Based on Automated Analysis of Online News Sources

Date Updated: 4/25/2019

Policy Problems

- Who is targeted by statute v. enforcement discretion?
- Undermines Good Samaritan laws
- Disparate impact
- Denial of MOUD may violate ADA, Rehabilitation Act, and 8th Amendment
- Fatal reentry
- Does not reduce drug use or drug crime
- Undermines LEAD / PAARI-type programs

Policy Problems

- Who is targeted by statute v. enforcement discretion?
- Undermines Good Samaritan laws
- Disparate impact
- Denial of MOUD may violate ADA, Rehabilitation Act, and 8th Amendment
- Fatal reentry
- Does not reduce drug use or drug crime
- Undermines LEAD / PAARI-type programs

Statutes: Targeting Traffickers “Only”

Drug dealers would face homicide charges after overdose under Sena



The New York State Senate



NEWS & ISSUES

SENATORS & COMMITTEES

BILLS & LAWS

EVENTS

ABOUT THE SENATE

Find you
important

This law would hold drug dealers accountable for the true cost of their activities, significantly diminish the open availability of these dangerous drugs on our streets and give district attorneys the necessary tools to work up the criminal chain to the ultimate supplier because facing life imprisonment for any amount of drugs that results in death is a profound disincentive to sell drugs within the state of New York.

This law seeks to punish those individuals involved in the illegal drug trade and is not intended to punish those individuals who are merely co-users.. Therefore a co-user who shares the drugs with the victim still has an incentive to follow the current good Samaritan law and save the other person as he or she will be able to avoid prosecution for homicide by sale of an opiate controlled substance and instead admit to a lower felony because it still is a distribution.

TERRENCE MU

ISSUE: CRIME

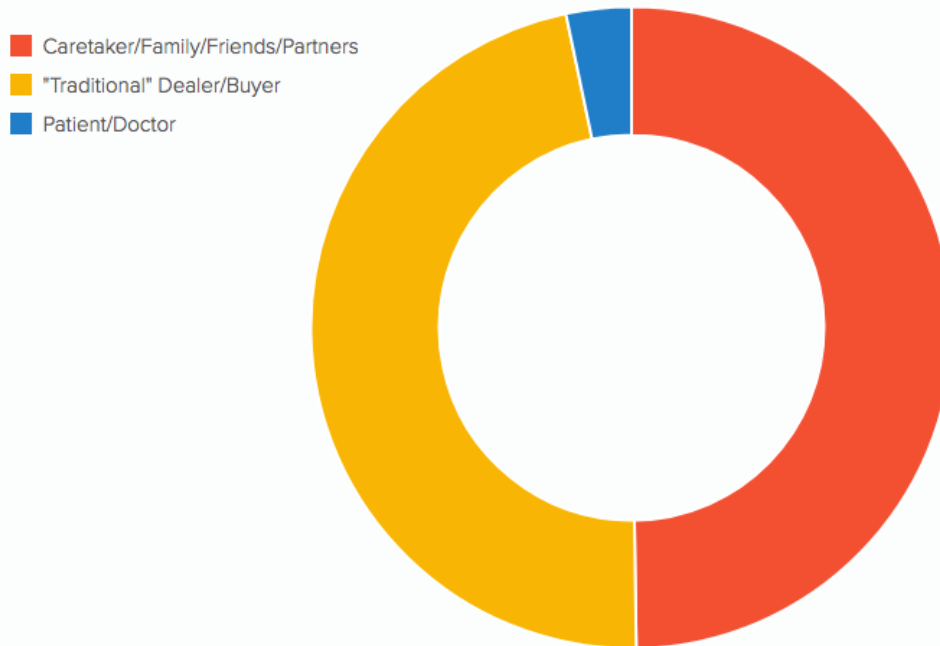


Enforcement Discretion: The Myth of the “Dealer”

HEALTH IN JUSTICE

[HOME](#) [PROJECTS](#) [ABOUT US](#) [PARTNERS](#) [CONTACT US](#) [PRESS](#)

RELATIONSHIP BETWEEN ACCUSED AND VICTIM



RELATIONSHIP BETWEEN
ACCUSED AND VICTIM

Majority of cases represent charges being filed against individuals who cannot be defined as “drug dealers,” but are instead family members, partners, or other actors.

Policy Problems

- Who is targeted by statute v. enforcement discretion?
- Undermines Good Samaritan laws
- Disparate impact
- Denial of MOUD may violate ADA, Rehabilitation Act, and 8th Amendment
- Fatal reentry
- Does not reduce drug use or drug crime
- Undermines LEAD / PAARI-type programs

Good Samaritan Laws v. Enforcement

- Good Samaritan Laws
 - Most states have them, but not federal gov't
 - Vary in what crimes get immunity
 - Vary on arrest, charge, and prosecution
 - PA only charge and prosecution
 - Only Vermont and Delaware include overdose death
 - *Limited information and media coverage*

Enforcement Gets Media Exposure

EXCLUSIVE: U.S. Attorney Preet Bharara to slap opioid dealers linked to fatal overdoses with federal charges



Manhattan U.S. Attorney Preet Bharara
DAILY NEWS

THE UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT *of* NEW YORK

HOME

ABOUT

U.S. ATTORNEY

DIVISIONS

NEWS

PROGRAMS

U.S. Attorneys » Southern District of New York » News » Press Releases

Department of Justice

U.S. Attorney's Office

Southern District of New York

SHARE

FOR IMMEDIATE RELEASE

Wednesday, October 12, 2016

United States Attorney Announces Charges Against Narcotics Trafficker Connected To Heroin Overdose Death

Preet Bharara, the United States Attorney for the Southern District of New York, William F. Sweeney Jr.,

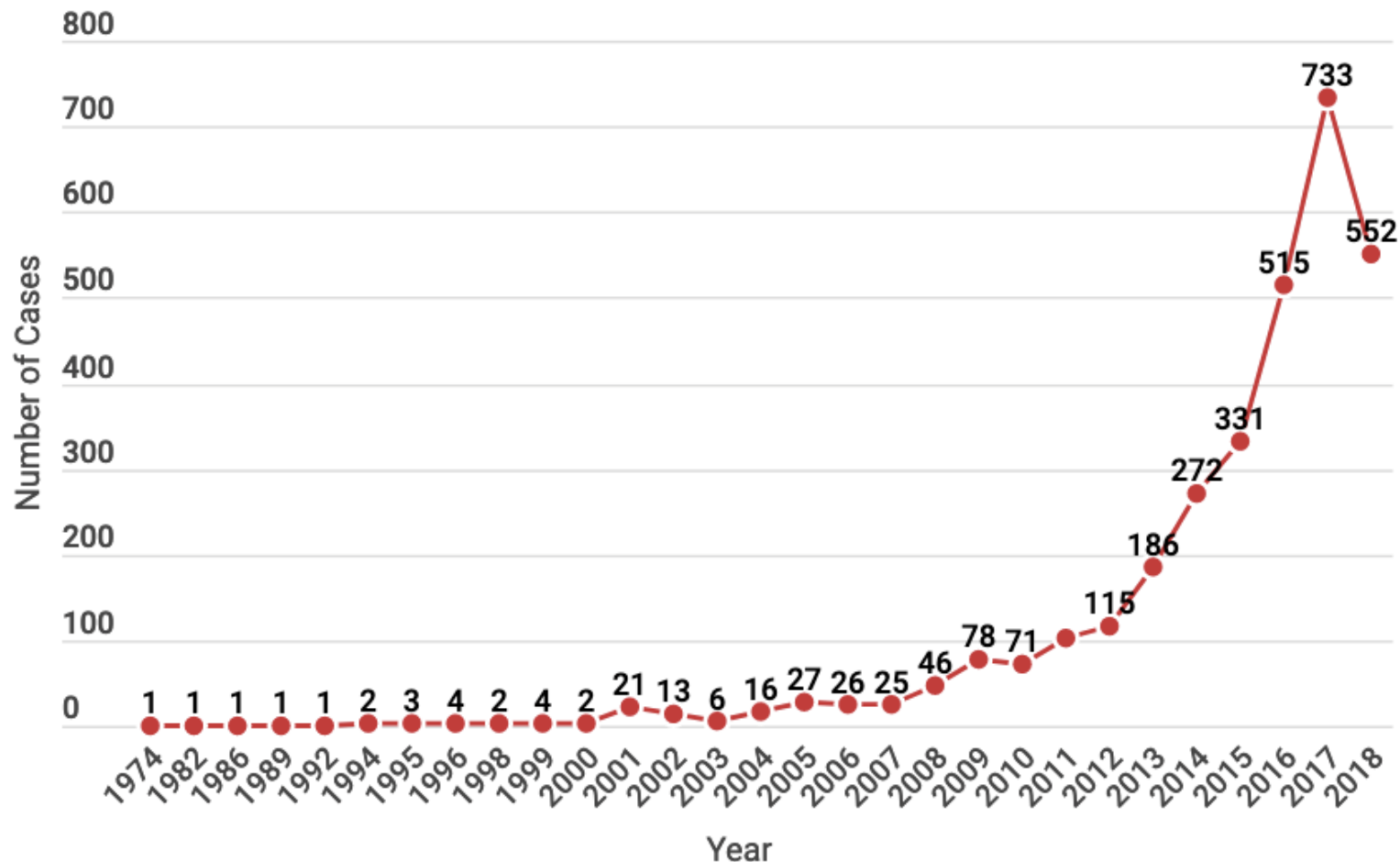
U.S. Attorney Preet Bharara stated: "The epidemic of opioid abuse is devastating our communities. Charges like those announced today strike at the heart of the problem – dealers who fuel the cycle of addiction and overdose. Anthony Delosangeles allegedly dealt in heroin, including the heroin that killed Thomas Cippollaro, a 25 year-old White Plains man. We thank the FBI and our local law enforcement partners for their extraordinary efforts that led to the charges today."

Enforcement Gets Media Exposure



DDRD Media Mentions

DIH Charges by Year



Source: <http://healthinjustice.org/drug-induced-homicide>

Consequences of Enforcement: Less Helpseeking

International Journal of Drug Policy 50 (2017) 82–89



Contents lists available at ScienceDirect

International Journal of Drug Policy

journal homepage: www.elsevier.com/locate/drugpo



Research paper

“Caught with a body” yet protected by law? Calling 911 for opioid overdose in the context of the Good Samaritan Law



Amanda D. Latimore^{a,b,c,*}, Rachel S. Bergstein^{b,c,1}

^a Baltimore City Health Department, 1001 East Fayette Street, Baltimore, MD 21202, United States

^b Johns Hopkins Bloomberg School of Public Health, 615 North Wolfe Street, Baltimore, MD 21205, United States

JOURNAL OF CRIME AND JUSTICE, 2016

<http://dx.doi.org/10.1080/0735648X.2016.1215932>

Routledge
Taylor & Francis Group



Contents lists available at ScienceDirect

International Journal of Drug Policy

journal homepage: www.elsevier.com/locate/drugpo



Research paper

Why are some people who have received overdose education and naloxone reticent to call Emergency Medical Services in the event of overdose?



Stephen Koester^{a,b,*}, Shane R. Mueller^{b,c,d}, Lisa Raville^e, Sig Langeegger^f,
Ingrid A. Binswanger^{c,d}

^a Department of Anthropology, University of Colorado Denver, Denver, CO, USA

^b Department of Health & Behavioral Sciences, University of Colorado Denver, Denver, CO, USA

^c Division of General Internal Medicine, University of Colorado School of Medicine, 12631 E. 17th Ave. 8-180 Aurora, CO 80045, USA¹

^d Institute for Health Research, Kaiser Permanente Colorado, Denver, CO, USA²

^e Harm Reduction Action Center, 231 E Colfax Ave, Denver, CO 80203, USA

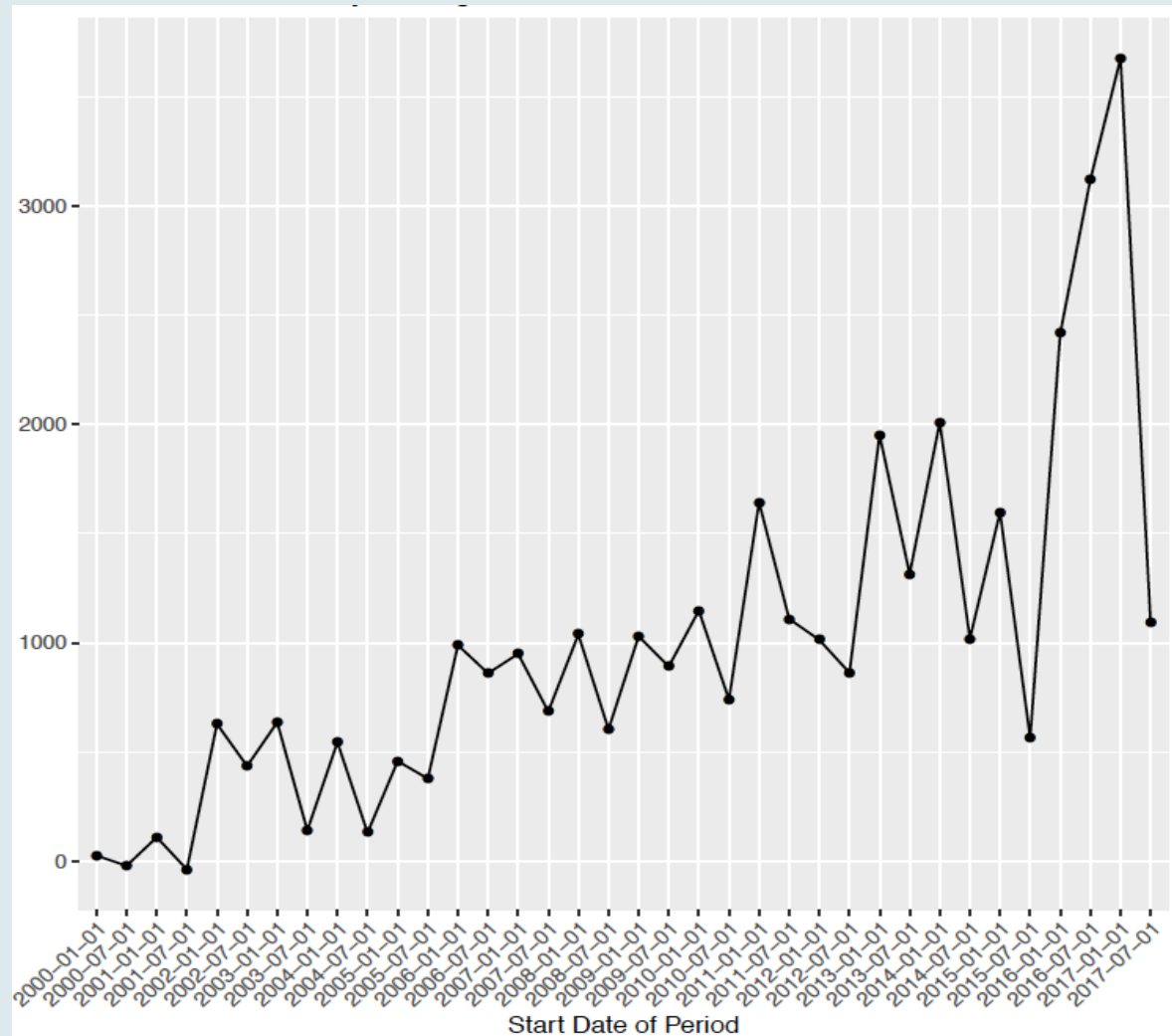
^f Faculty of International Liberal Arts, Akita International University, Japan

“If you[’re] the one that's with them when they go out, you're possibly going to be **CHARGED WITH THEIR DEATH.** So that's the main reason why a lot of people don't call [911].”

Source: Latimore and Bergstein, *IJDP* (2017)

Consequences of Enforcement: More people are dying

Excess overdose deaths
in states with DDRD
enforcement
versus those without



Kung, Lok and Beletsky (2019)

Policy Problems

- Who is targeted by statute v. enforcement discretion?
- Undermines Good Samaritan laws
- Disparate impact
- Denial of MOUD may violate ADA, Rehabilitation Act, and 8th Amendment
- Fatal reentry
- Does not reduce drug use or drug crime
- Undermines LEAD / PAARI-type programs

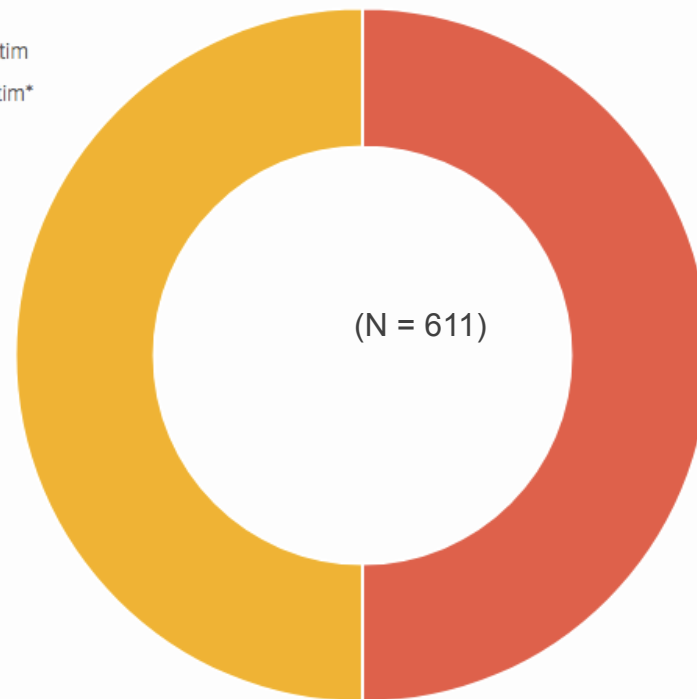
Enforcement Discretion Tells a Racist Tale

RACE OF ACCUSED (DEALER) AND VICTIM (BUYER)

Near majority of cases involving alleged dealers represent a person of color
"dealer"- white "victim" dyad, confirming that this trend is squarely rooted in the racist implementation of drug laws

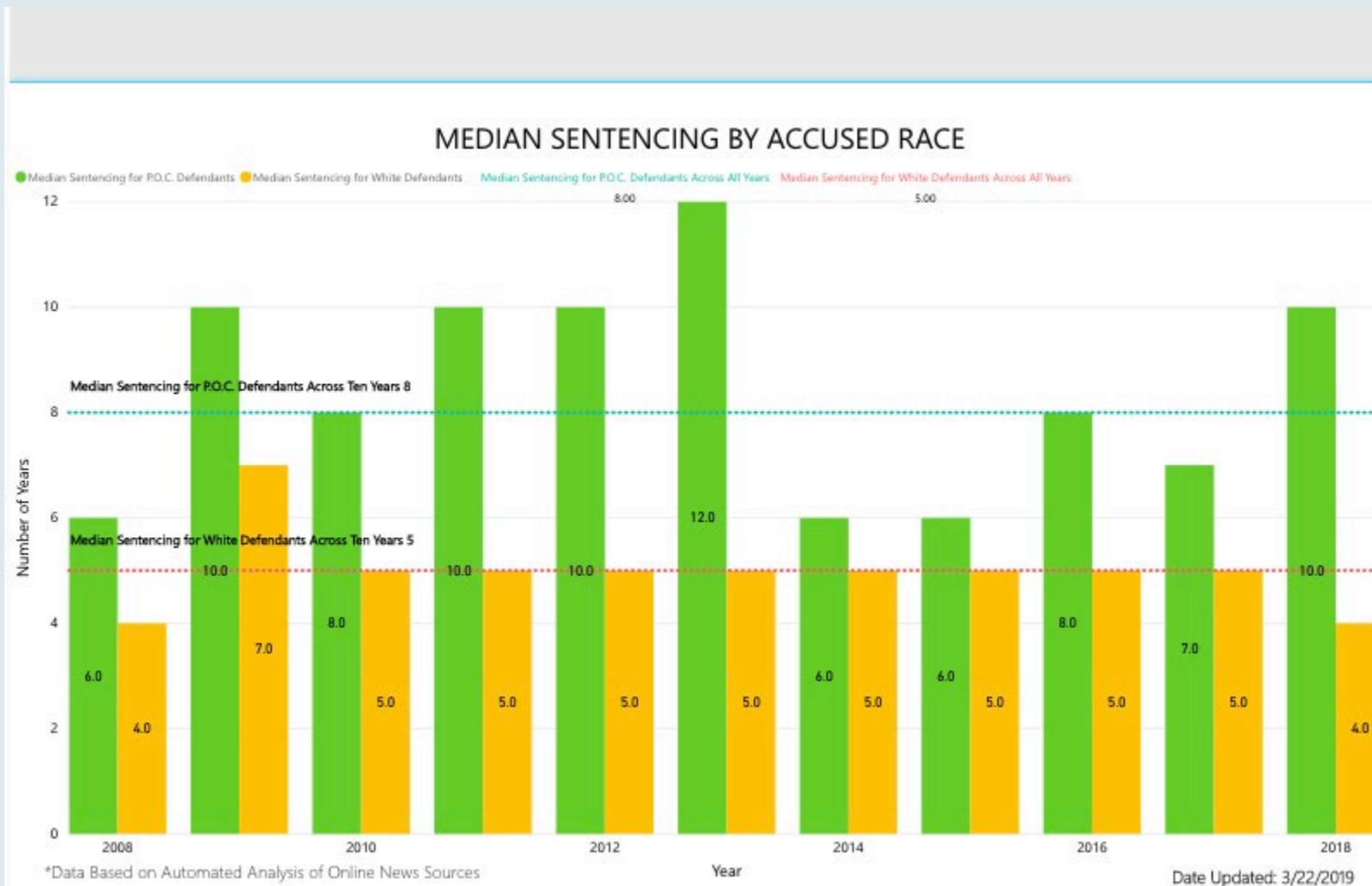
RACE OF ACCUSED (DEALER) & VICTIM (BUYER)

- White Accused & White Victim
- P.O.C Accused & White Victim*



P.O.C Defined as Person of Color. Source: Online News Articles 2000-2017

Drug War Disparities Continue



Policy Problems

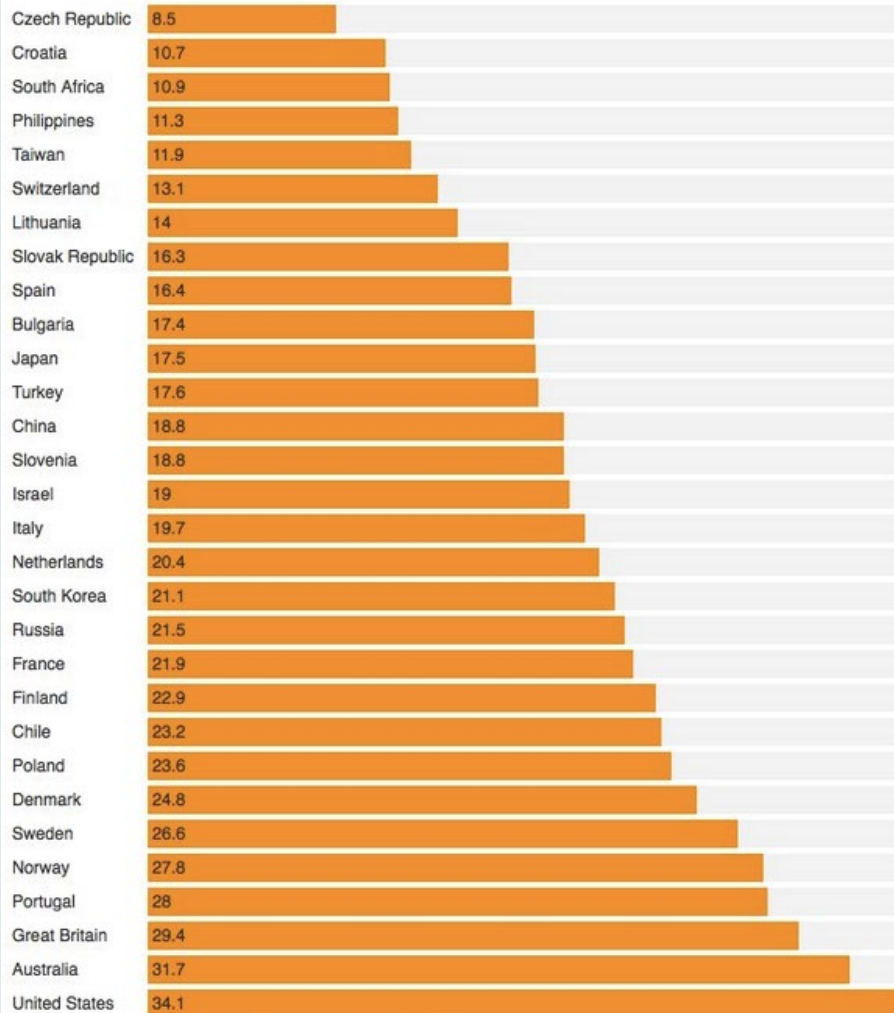
- Who is targeted by statute v. enforcement discretion?
 - Undermines Good Samaritan laws
 - Disparate impact
 - Denial of MOUD may violate ADA, Rehabilitation Act, and 8th Amendment
 - Fatal reentry
 - Does not reduce drug use or drug crime
 - Undermines LEAD / PAARI-type programs
- see HIJ, *Drug-Induced Homicide Defense Toolkit*
- see DPA, *An Overdose Death is Not Murder*
- see Legal Action Center

Contact

Jeremiah Goulka
j.goulka@northeastern.edu
www.healthinjustice.org

American Suffering

Percent with physical pain "often" or "very often"

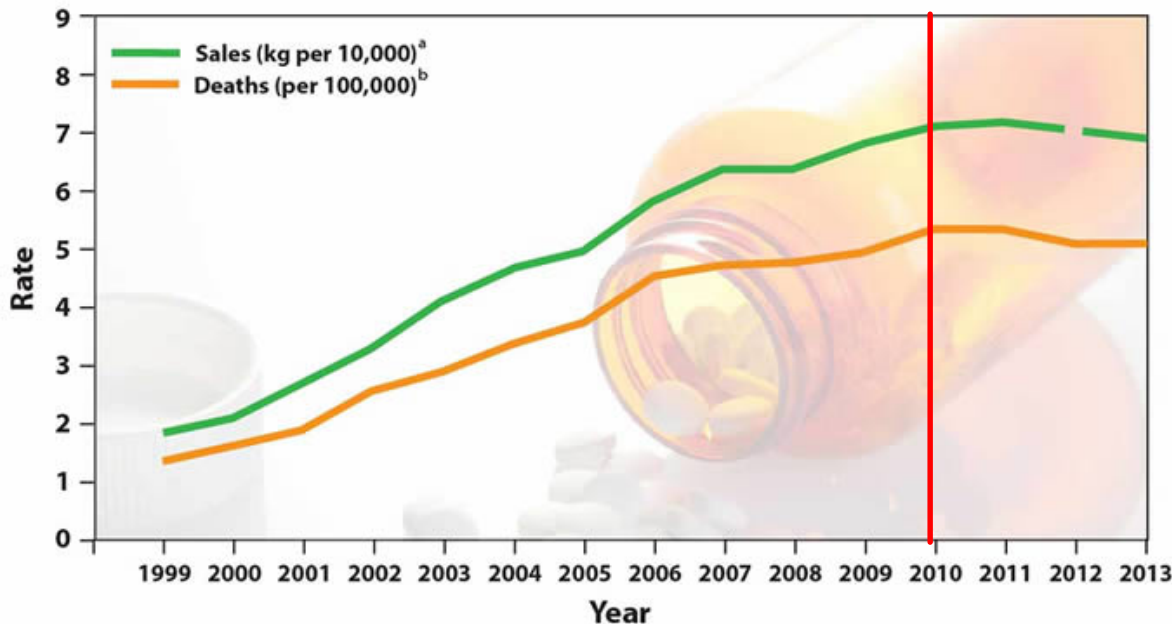


Source: International Social Survey Programme • Created with Datawrapper

- Structural Determinants:
- Occupational injury
 - Protracted military conflict
 - Overweight and obesity
 - Lifestyle
 - Built environment
 - Diet
 - Environmental/metabolic
 - Cultural attitudes/stigma
 - Etc.

Where Did this Crisis Come From?

Prescription Painkiller Sales and Deaths



Sources:

^aAutomation of Reports and Consolidated Orders System (ARCOS) of the Drug Enforcement Administration (DEA), 2012 data not available.

^bCenters for Disease Control and Prevention, National Vital Statistics System mortality data. (2015) Available from URL: <http://www.cdc.gov/nchs/deaths.htm>.

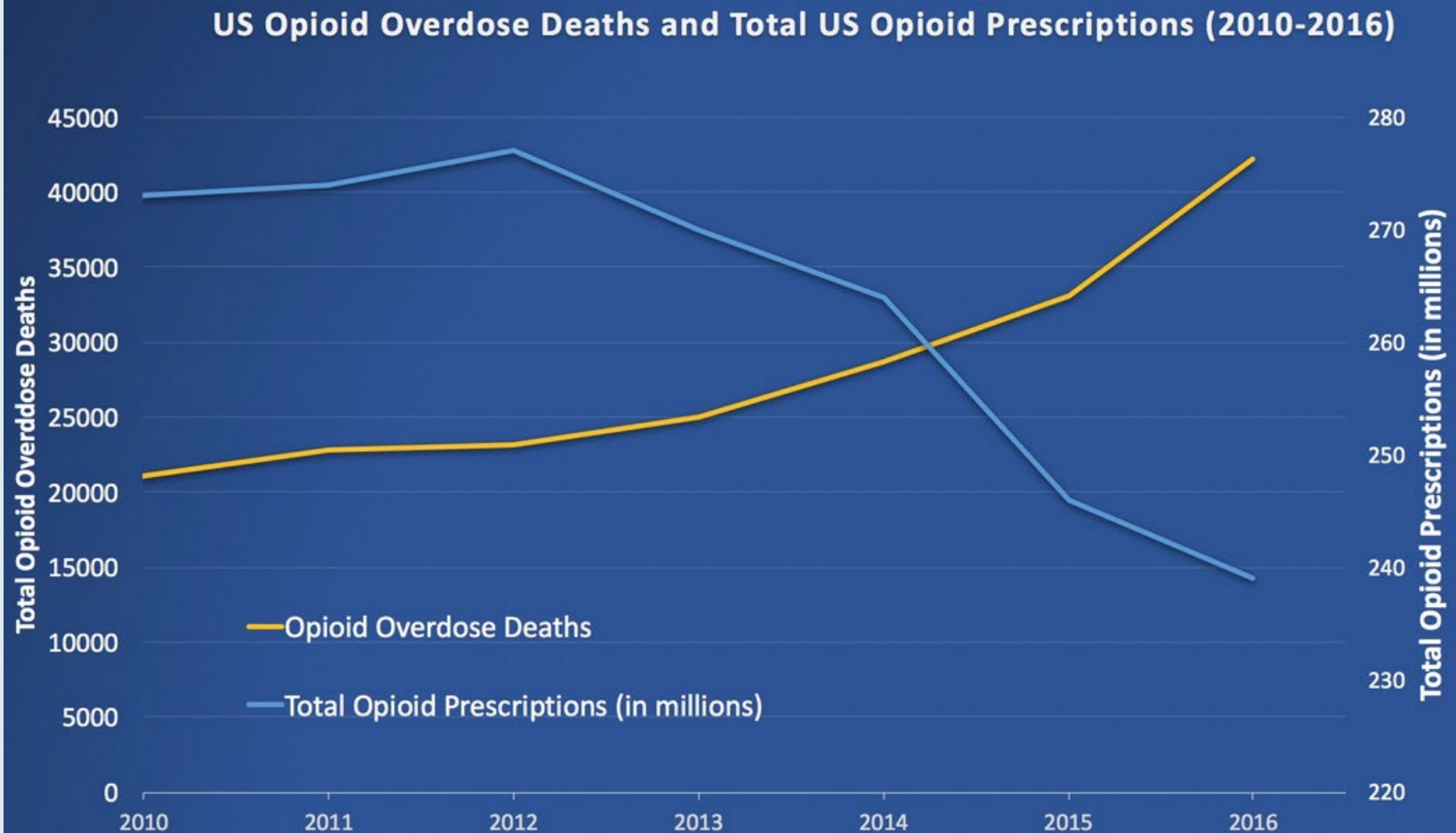
Supply-side narrative

- Overprescribing
 - Lack of education, info
 - Underuse of alternatives
 - Diagnostic challenges
 - System, patient pressure
- Doctor shopping, diversion, “pill mills,” other rogue acts
- Pharmaceutical industry, insurance industry, regulatory capture

Supply-Side Policy Interventions

- Prescribing limits, guidelines
- PDMPs authorizations and mandates
- Pill-mill laws and trafficking enforcement
- Prosecution of unscrupulous prescribers, dealers
- Reformulation of prescription drugs
- Withdrawal of prescription drugs?

Opioid Crisis: Challenging the Narrative

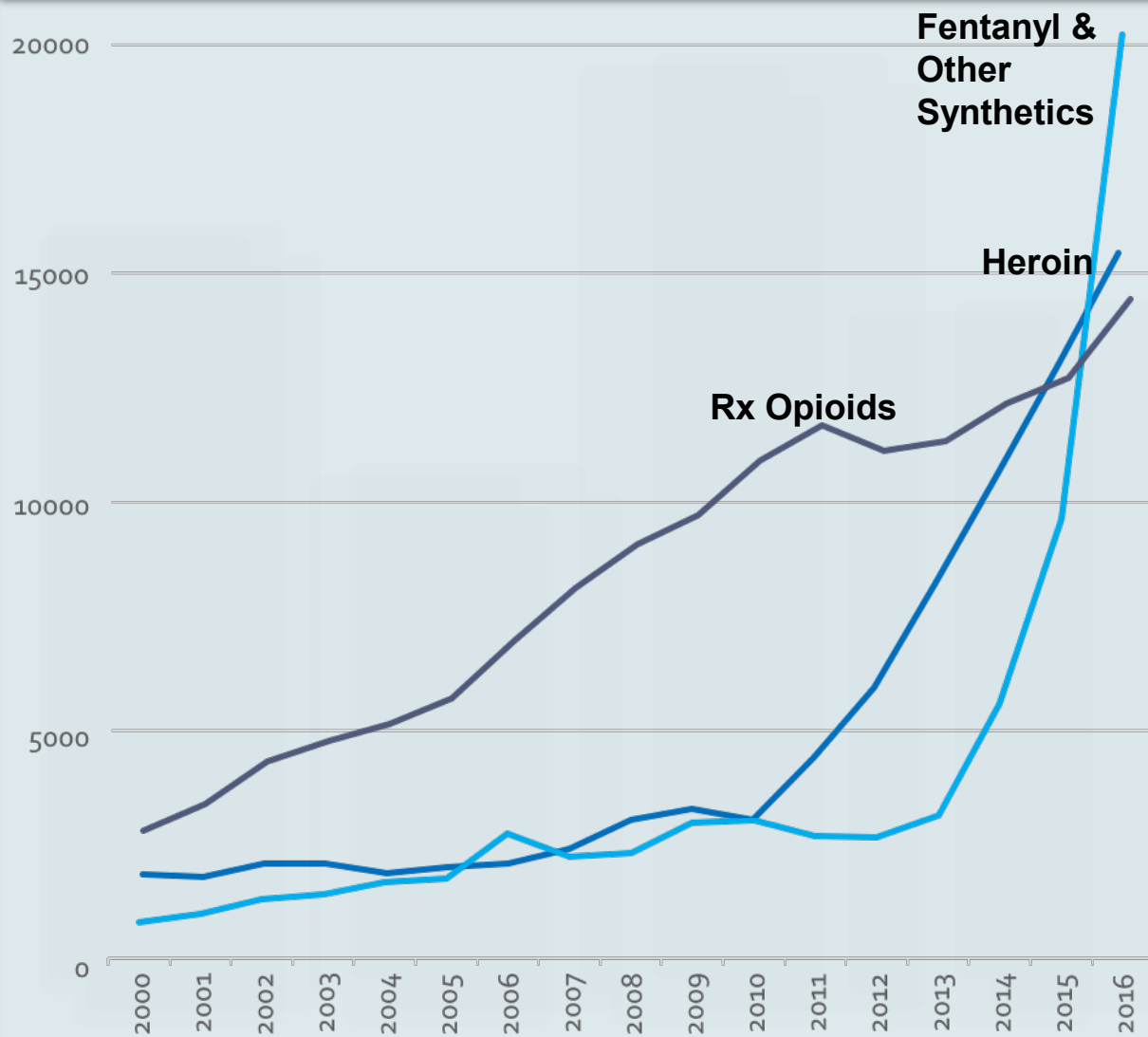


Opioid Overdose Deaths Tabulated by CDC: https://www.cdc.gov/nchs/data/databriefs/db294_table.pdf#page=4

Total Opioid Prescriptions from Pezalla et al, 2017: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5319424/>

Graph prepared by Stefan Kertesz, MD <https://tinyurl.com/y88tvx2>

Today's Opioid Crisis



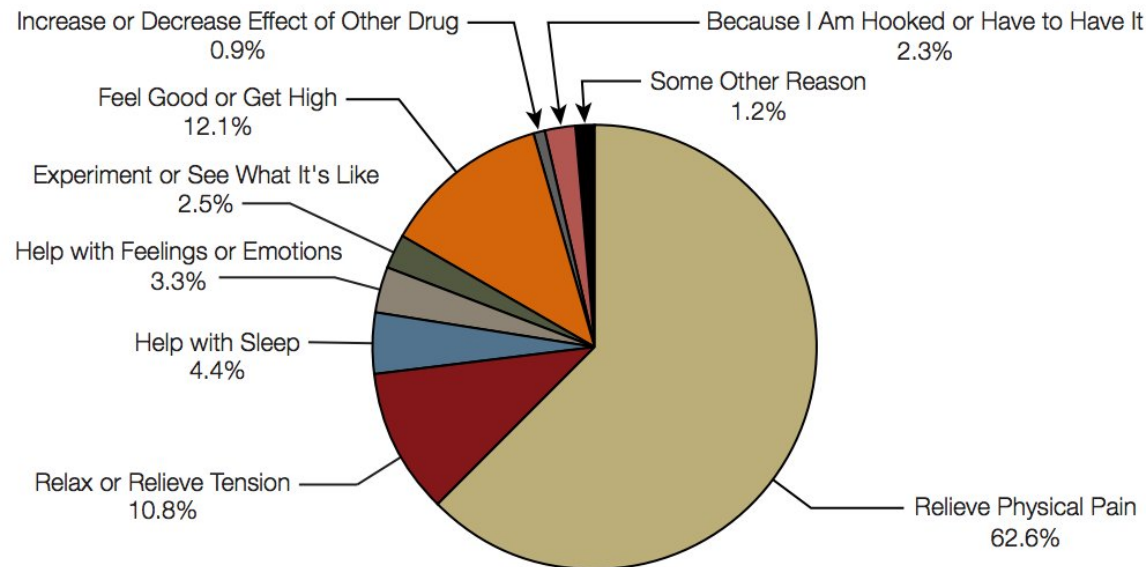
Three phases

1. Prescription opioids
2. Heroin/black market
3. Synthetic contamination

Source: New York Times (2017), National Center for Health Statistics, Centers for Disease Control and Prevention

Opioid Crisis: Challenging the Narrative

Main Reasons for Prescription Pain Reliever Misuse for Most Recent Misuse Among Individuals Aged 12 or Older in the United States Who Misused Prescription Pain Relievers in the Past Year (2015)¹⁴

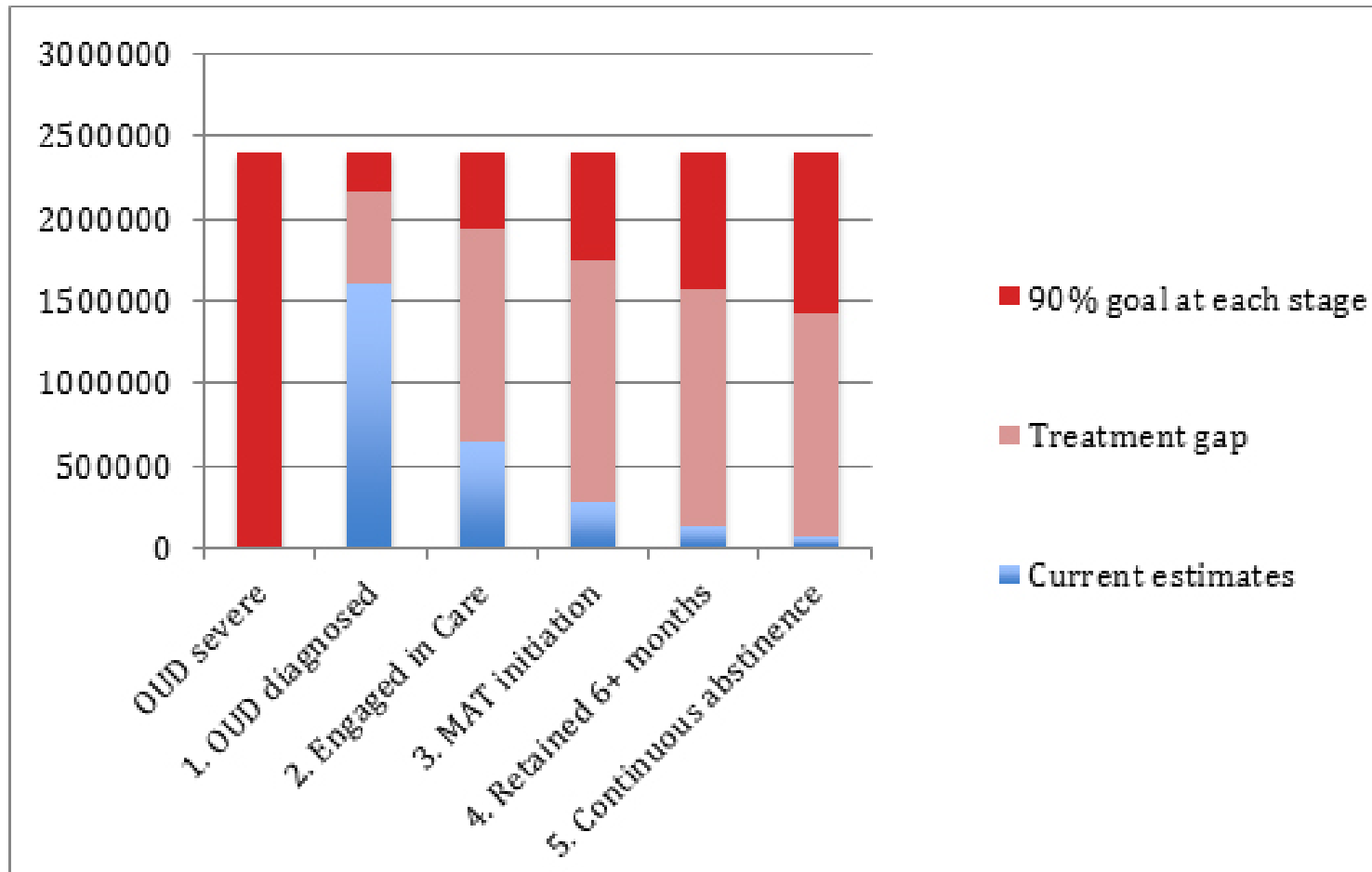


In 2015, among individuals aged 12 or older in the United States who misused prescription pain relievers in the past year, the most frequently indicated reasons for their last misuse were to relieve physical pain (62.6%), to feel good or get high (12.1%), and to relax or relieve tension (10.8%).

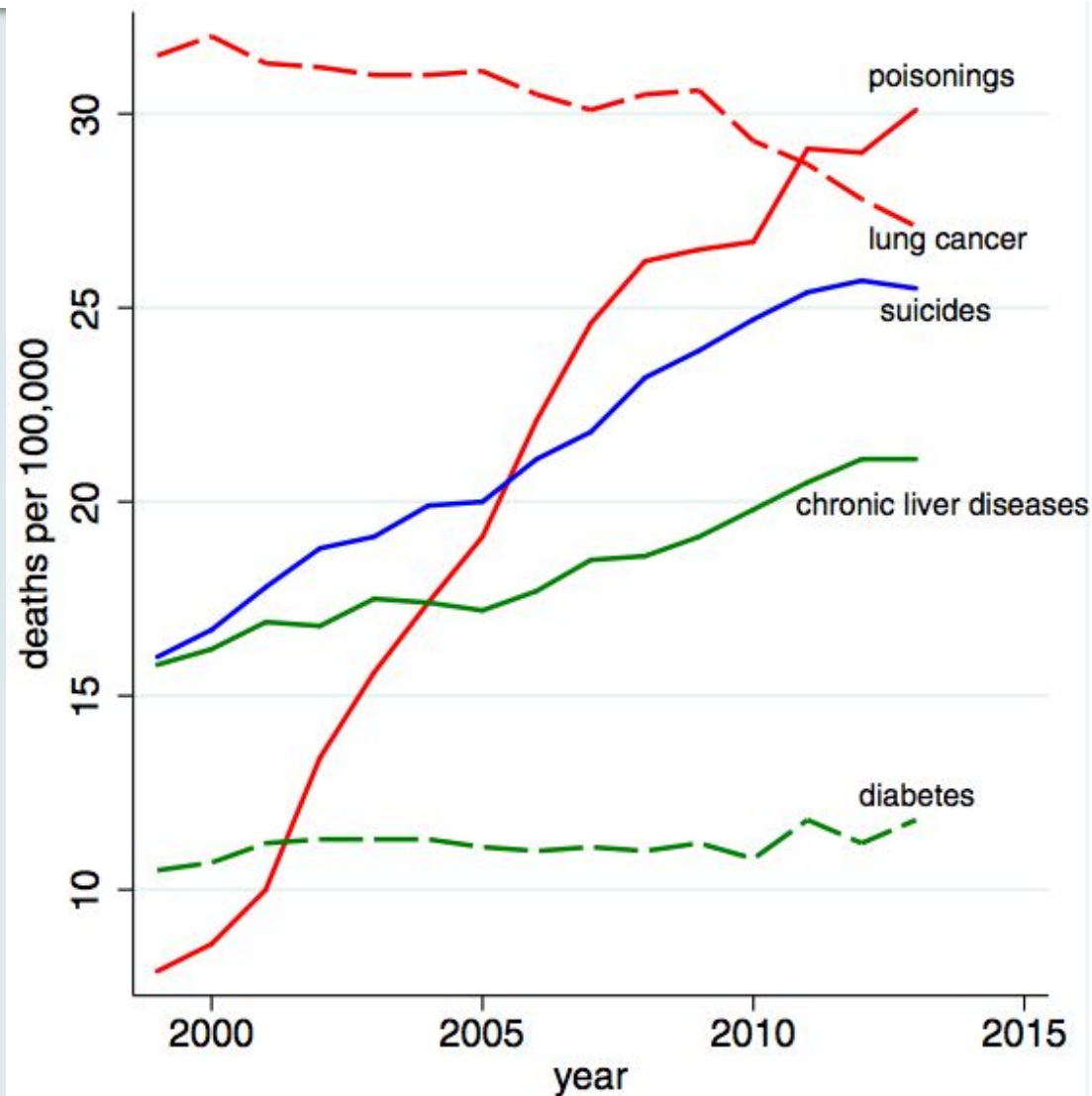
12.5 Million People Aged 12 or Older Who Misused Prescription Pain Relievers in the Past Year

Source: SAMHSA, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2015.

The Treatment Gap



Structural Determinants of Overdose



Source: Case & Deaton, 2015